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Title	:	SYSTEM AND METHOD FOR ESTIMATING PREVALENCE OF DIGITAL CONTENT ON THE WORLD-WIDE-WEB	)	**May 16, 2012**
Art Unit	:	2442	)	
			)	**/ Kathryn Kolling/**
Examiner	:	John Moore Jain Macilwinen	)	Kathryn Kolling

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

The applicants are filing herewith a Notice of Appeal and respectfully request review of this case prior to filing an appeal brief. As addressed below, the rejections under 35 U.S.C. §§ 101 and 102 of the final Office action mailed on February 16, 2012, are based on clear errors and cannot be sustained on appeal. Thus, the applicants respectfully request reversal of these rejections.

35 U.S.C. § 102 Rejections

Independent claims 1, 6, and 70 were rejected under 35 U.S.C. § 102 as allegedly anticipated by Gupta (U.S. Patent No. 6,487,538). Independent claim 1 sets forth a statistical summarization system to **estimate** a number of times that a first content object has been displayed to visitors of a webpage based on (1) a number of times that the first content object was included in content files received in response to requests, (2) a total number of times that the webpage was requested, and (3) an estimate of a number of times that the webpage has been accessed.

Gupta does not teach or suggest a system to estimate a number of times that a first content object has been displayed to visitors of a webpage. Rather, the methods described in Gupta have no

need to estimate the number of times that a first content object has been displayed to visitors of a webpage because Gupta retrieves the number of times that an advertisement was transmitted from a server to a client directly from a log stored at that server. As explained in Gupta, "[s]ince hit count numbers and click-through numbers may be inflated, a system for auditing and verifying that an advertisement was actually displayed to a user is desirable." (See Column 16, lines 35-41). In Gupta, logs containing information regarding all transmissions (e.g., number, type, timing of URL requests and transmitted advertisements) are maintained by proxies and web servers. (See Column 16, lines 48-61). To perform a one-to-one verification of web server requests to advertisement transmissions by a proxy, Gupta describes cross-checking a specific URL request from a particular client at a particular time with a transmission of an advertisement from a web server to the particular client at the particular time. (See Column 17, lines 11-19). Gupta describes performing the cross-checking for every request and transmission on an analyzed system. By cross-checking this information, the method described in Gupta determines whether an advertisement was actually displayed at that client. (See Column 17, lines 19-24). In other words, when verifying a proxy, Gupta matches each transmission of an advertisement identified in the logs of the proxy server to a corresponding URL request in the logs of a web server. Thus, the method described in Gupta retrieves the number of times an advertisement was displayed at a client from a log without any need to estimate the number of times that the advertisement has been displayed. The verification of the proxy server log does not include any estimating because Gupta has access to the actual data in the logs.

The final Office action of February 16, 2012, admits that Gupta utilizes data retrieved from a log stored at a client. However, in response to the previously presented argument that Gupta does not estimate a number of times that an advertisement is displayed, the Examiner alleges that data obtained from a log stored at a single client is used to extrapolate the number of times an item was displayed to all clients across a system as Gupta recites "different sets of content-providers" and "different sets of proxies." (See Office action, pages 2-3). The Examiner has taken these portions of

Gupta out of context. The allegations are in error and are not supported by the specification of Gupta.

While Gupta describes "different sets of content-providers" and "different sets of proxies," Gupta does not describe using data for one client to estimate data for multiple clients in a system. Rather, Gupta describes "obtain[ing] the hit-count information from different sets of content-providers . . . as well as different sets of proxies." (See Column 17, lines 19-33) (emphasis added). Gupta does not need to estimate because the hit-count information is directly retrieved. Each hit described in Gupta corresponds to a content-provider providing a page to a proxy that inserts a particular advertisement for a client. (See Column 17, lines 33-35).

Gupta describes cross-referencing the hit counts to check whether each proxy is behaving within the industry norm for that particular advertisement (See Column 17, lines 35-38). Gupta does not describe or suggest that the industry norm is an estimate of the number of times that a content object has been displayed to visitors of a webpage. Gupta describes that the industry norm can be determined by a sampling auditing scheme (See Column 17, lines 39-40). However, Gupta does not describe how the sampling auditing scheme determines an industry norm. Rather, Gupta describes testing a proxy by artificially telling the proxy that no advertisements are available and obtaining the actual hit information from the logs of the proxy server. The proxy's claims regarding the hit-rate are statistically examined to determine if the rates are likely or not (See Column 17, lines 40-46). A statistical analysis can be used to check the accuracy of the proxy's reporting by verifying that the number of hits is reduced based on the artificially unavailable advertisements. Such a statistical analysis is not an estimation because hit-count information reflecting actual transmissions of advertisements is again being analyzed. Furthermore, Gupta does not describe any estimation of global values based on this sampling analysis or as part of the statistical analysis. Accordingly, the Examiner's allegations that Gupta describes extrapolation are not supported by the description in Gupta. Furthermore, Gupta does not describe using the obtained information to estimate or influence

future hit information reports. Thus, data stored for a client is not used to estimate the number of times an item was transmitted to multiple clients across a system as alleged in the final Office action.

The method described in Gupta merely compares the number of times a URL is requested with the number of times an advertisement is displayed to determine if advertising rates being charged are appropriate. The method of Gupta **retrieves** this information from logs stored in servers. Accordingly, Gupta does not describe estimating and has no need to **estimate** a number of times that a first content object has been displayed to visitors of a webpage. Gupta does not describe any extrapolation or estimation of advertisement display in the portions cited in the final Office action or anywhere else. The only mention of estimation in Gupta is of estimating a geographic location of the user (See Column 5, lines 33-35). The Examiner's argument is in error because it is not supported by Gupta. As such, independent claim 1 and all claims depending therefrom are allowable over Gupta.

Independent claim 6 is also allowable. Claim 6 recites a method including estimating a number of times that a first content object has been displayed to visitors of a webpage. Gupta fails to teach or suggest such a method. Accordingly, claim 6 and all claims depending therefrom are allowable.

Independent claim 70 is also allowable. Claim 70 recites instructions that, when executed, cause a machine to estimate a number of times that a first content object has been displayed to visitors of a webpage. Gupta fails to teach or suggest such instructions. Accordingly, claim 70 and all claims depending therefrom are allowable. Withdrawal of the § 102 rejections and allowance of the claims are respectfully requested.

35 U.S.C. § 101 Rejections

Independent claim 70 was rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter as allegedly reading on propagating signals. Independent claim 70 recites a "tangible machine readable medium storing instructions," which is statutory. Signals are not tangible and, thus, claim 70 cannot reasonably be interpreted to cover signals. The Federal Circuit made clear

that **tangibility** is the touchstone of statutory subject matter in the article of manufacture context in *In re Nuijten*, 500 F.3d 1346, 1356 (Fed. Cir. 2007). In that case, the Federal Circuit stated:

> These definitions [of statutory subject matter] address "articles" of "manufacture" as being ***tangible*** articles or commodities. A transient electric or electromagnetic transmission does ***not*** fit within that definition [of ***tangible*** article of manufacture].

(emphasis added). Accordingly, the Federal Circuit ruling that held signals non-statutory did so on the basis that signals are **not** tangible. Thus, **tangible** articles of manufacture do not read on signals. This point was recently confirmed by the Board of Patent Appeals in *Ex Parte Hu*, App. No. 2010-000151 (BPAI 2012). In that decision, the Board stated:

> We find that the computer-readable storage medium is directed to a ***tangible*** storage medium, which can be read by a computer. While a computer-readable medium is broad enough to encompass both tangible media that store data and intangible media that carry a transitory, and propagating signal containing information, a computer readable storage medium is distinguished therefrom as it is confined to ***tangible*** media for storing data. Therefore, ***because the cited claims are limited to a tangible medium*** within one of the four statutory classes of 35 U.S.C. § 101, ***they are directed to statutory subject matter***.

(Id. At Page 3) (emphasis added). Accordingly, the case law enunciated by the Federal Circuit and now followed by the BPAI[1] provides that ***tangible storage media are directed to statutory subject matter*** and do **not** cover signals. Since claim 70 is directed toward a tangible machine readable medium, claim 70 is statutory. Withdrawal of the § 101 rejections is respectfully requested.

Reconsideration and allowance of the claims is respectfully requested. The Commissioner is authorized to charge any necessary fees or credit any overpayment to Deposit Account No. 50-2455.

Respectfully submitted,

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[1] The Hu decision is not identified as precedential at present. However, The Nielsen Company, Microsoft, Hewlett-Packard, and AT&T have joined in a petition to have the decision made precedential.